BEFORE THE HON'BLE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Complaint 7/74 in A.I D. 10/74.

Complainant: Sri Seshagiri Rao.

-Vs-

Respondent: The Management of Kino Talkies.

Memo of Settlement

Both parties have settled the above matter on the following terms :—

1. Opp site Party agrees to pay a sum of Rs. 1500 as *ex-gratia* payment to the complainant. The amount will be paid within a month from this date in two fortnightly instalments. This amount shall be in full and final settlement of all claims of the complainant excluding earned wages if any. Wherefore both parties pray that an award may be passed interims of the above settlement.

Dated 18th day of October 1974 at Bangalore.

Sd.
P. Seshagiri Rao,
Complainant.

Sd.
Opposite Party.

Sd.....
Authorised Representative of Complainant.

Sd. V. L. Narasimha Murthy
Advocate for Opposite Party.

G. S. BHAGWAT,
Presiding Officer,
Additional Industrial Tribunal,
Bangloare.

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute.—Industrial dispute between the Workmen and the Management of Karnataka State Road Transport Corporation, Sirsi Division, North Kanara District.

Award of the Labour Court, Hubli published.

Read the following papers:

(1) Letter No. LCH/1239/74-75, dated 13th September 1974, from Sri H. L. Narayana Gowda, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI

Reference ID (LCH) Claim No. 88/73

Present: Sri H. L. Narayanagowda, B.A., LL.B.,
Presiding Officer.

Dated: 13th September 1974

Claimant:

Sri G. S. Pokale, Represented by the General Secretary, Dharwar District General Workers' Association, Old-Hubli, Hubli.

Respondent:

The Management of Karnatak State Road Transport Corporation, Sirsi Division, N. K. District.

Order No. SWL 747 LLD 73, dated 19th December 1973.

JUDGMENT AND AWARD

The Government of Karnataka have referred the Industrial dispute between the Claimant Sri G. S. Pokale, and the Management of Karnataka State Road Transport Corporation, Sirsi Division, for adjudication on the following points of dispute. The points of dispute are :

"1. Whether the Management of Karnatak State Road Transport Corporation, Sirsi Division, are justified in terminating the services of Sri G. S. Pokale, Driver with effect from 1st May 1971 ?

2. If not, to what relief the said workman is entitled ?"

2. The claimant in his claim statement states as follows :

The claimant was appointed as Driver on 27th April 1961 and he was confirmed on 8th June 1962 in Hubli Division. He was working efficiently, honestly. After the formation of Sirsi Division, his services were transferred to Sirsi Division. The claimants service record was clean and he was known for his smooth and obedient nature towards his superiors and he earned all the good will and high appreciation from his superiors. The services of the claimant was "meritorious service" for the K.S.R.T.C. Hence he was honoured with two National Saving Certificate and one cup as the best driver. Due to hard and continuous double work of the claimant his health failed and he fell sick from 27th July 1970. While he was sick he sent a application with medical certificate upto 19th April 1972. The Management has sanctioned leave from 1st August 1970 to 22nd October 1970, 83 days leave with wages from 23rd October 1970 to 30th October 1970, 8 days leave without wages on medical ground on 23rd and 24th October 1970 and for further leave, the Management did

not inform about the leave applications of the claimant granting or refusing of leave. Till he came to join his service with the certificate of District Surgeon, Karwar. On 19th April 1972 the claimant approached the Deputy General Manager and Divisional Controller, Sirsi with a joining report with a certificate of "fit to resume duty" with an advise for light duties issued by the District Surgeon, Karwar. The Deputy General Manager and Divisional Controller directed him to go and report to the Karwar Depot, Manager. Where he was working previously. The claimant approached the Depot Manager with joining report and medical certificate on 1st May 1972. But the Depot Manager did not entertain him saying that he should approach again the Divisional Controller and the claimant's name was not in the muster roll of his depot. Therefore the claimant sent an application to the Divisional Controller, M.S.R.T.C., Sirsi on 2nd May 1972 (the copy is enclosed). All of a sudden the caimant has received the order dated 10th and 15th May 1972 that his service has been terminated with effect from 1st may 1971 for unauthorised absence. Then on 22nd May 1972 the claimant has appealed to the General Manager, M.S.R.T.C., Bangalore. But no decision was taken by the said Officer upto 22nd January 1973. Then the claimant raised the Industrial dispute and the same was ended in failure in the conciliation proceedings on 26th May 1973. The General Manager without holding the Domestic enquiry himself, or ordering to hold the domestic enquiry, without applying his mind to the facts of the appeal he passed an order for re-appointment as a fresh candidate. The Management did not issued the charge sheet, or held any domestic enquiry. The action of the Management is illegal, unjust and contrary to rules of natural justice. The claimant was to maintain his big family consisting of old mother, wife and three children out of which two are students. Therefore he prays that the Court may set aside the illegal order of termination and reinstate him with continuity of service and full back wages with interest at 9 per cent from the date of the dues and also the cost of this proceedings.

3. The respondent in its written statement pleads as follows :

It is not true that the claimant was having clear record. It is true that he had sent the medical certificate and an application from 20th July 1970 upto 30th April 1971. All the period is treated as leave on Medical grounds. But it is not true to say he was sick and sent leave application and medical certificate to the Respondent. It is not true that the Respondent has failed to inform him about grant of the leave since no such request was made for over one year from 1st May 1971 to 19th April 1972. The argument made in para 3 are all false and they should not be considered. In the meanwhile the Respondent has issued a show-cause notice to the applicant asking him to explain for his unauthorised absence from 1st May 1971 onwards. But the said show-cause notice was returned by the Postal authorities as the applicant was not available at the notified address of the applicant. The enquiries were made with the Depot Manager, Karwar about whereabouts of the applicant. The Depot Manager was also not aware where the claimant was staying. It is not true that that the services were terminated all of a sudden. But his services were terminated after careful considerations and enquiry about his unauthorised absence. The termination of the claimant is as per service conditions by which he is governed. It is not true that the General Manager has not made any enquiries but the claimant was re-appointed as fresh candidate after going through the records and the appointment is given on humanitarian grounds. Hence, the contents of the petitioner are not true. It is not true that the Respondent Management has not made any enquiries and the action of the Respondent is in accordance with law and on natural justice. It prays that the reference may be rejected.

4. In support of his case, the claimant has examined himself as WW-1 and has closed. Ex. W-1 to W-5 are the documents filed for him. The Respondents examined MW-1 and has closed. Ex. M-1 is the document filed for it.

5. I have perused the records and heard Sri P. G. Wadikar, learned representative for the claimant and Sri S. M. Shettar learned advocate for the Respondent Corporation.

6. The MW-1 clerk in the Respondent Corporation in his evidence has stated that the claimant was Driver in their Corporation in Sirsi Division. He was on leave from 20th July 1970 to 30th April 1971 on medical grounds. He went on extending leave from month to month during this period. But he did not submit any leave application from 1st May 1971 upto 19th April 1972. Leave had been sanctioned upto 30th April 1971. So he was issued with a show-cause notice as to why his services should not be terminated, for his unauthorised absence and he was asked to submit his explanation within 7 days of the receipt of the show-cause notice. Ex. M-1 is the show-cause notice. Ex. M-1 was sent to his last notified address of the claimant given in his leave application. The claimant was not available in his last known address. Then they made attempts to get Ex. M-1 served upon him. The copy of Ex. M-1 was notified on the notice Board where he was serving. At that time he was in Karwar Depot. Inspite of this the claimant did not appear before them nor submitted any leave application. Subsequently he was dismissed for his continued unauthorised absence. He has been dismissed, *w.e.f.*, 1st May 1971. According to their service rules, a person who absent himself continuously he is liable to be dismissed. Then he filed an appeal to the G. M. Now the G. M. has re-appointed him as a fresh candidate on humanitarian grounds. He is not entitled to get back wages.

7. In cross examination he states that Ex. M-1 was sent by Registered post they sent Ex. M-1 to his Savantwadi Address. the claimant had given his address in his leave application. Leave had been granted to him. It is not true that the claimant had not given the Savant Wadi address. First the claimant took leave for 5 days. Subse-

quently he applied for extension of leave upto 30th April 1971. The Ex. M-1 was returned from Savantwadi with postal endorsement that the address of the claimant was not known. It is true that the claimant had given Savantwadi address as his address during the leave period of one month. Ex. W-1 is the leave application of the claimant dated 3rd November 1970. Ex. M-1 was sent to the claimant on 30th June 1971, application for extension of leave filed by the claimant came from different places. Ex. W-2 is the leave application dated 1st April 1971. In this the claimant has not given his address. Since 1962 the claimant was working in their Corporation. They had maintained his service book. Ex. W-3 is the Service book of the claimant. In Ex. W-3 the claimant has given his permanent Address. They have not sent notice to his address mentioned in Ex. W-3. They have not informed the claimant that hence forward leave without pay would be sanctioned since no request was made by the claimant. All leave Divisional Establishment Orders have been notified on the Notice Board of the Depot. When the claimant was working. They did not sent establishment order to his home address. They made local enquiries both in Sirsi and in Karwar. There are no records to show that they held domestic enquiry. They did not send dismissal order to the home address of the claimant, since the whereabouts were not known. The dismissal order was not sent to his permanent address as mentioned in Ex. W-3.

8 In re-examination he states that after they sent Ex. M-1 to his Savantwadi address, they did not receive any communication from the claimant regarding his whereabouts.

9 The claimant as WW-1 has stated that since 1961 he was working in the Respondent Corporation. He was made permanent in 1962. When he was made permanent he gave the Respondent his permanent address. He was doing his duties very efficiently. Six prize bonds, one National Saving Certificate and one Silver cup have been awarded to

him in appreciation of his efficient service to the Corporation. He was being given double duties. Because of double duties he fell ill. So he took leave. He did not go to Savantwadi. The Corporation did not issue pass. He had given leave application and application for pass together. When he was ill, he was sending leave applications regularly. He sent leave applications till he joined service. He was not informed by the Respondent that his leave had been exhausted. Then he went to Karwar depot along with Medical certificate to join duties. He had taken the Certificate of Civil Surgeon. The Depot Manager directed him to go to Divisional Office. He met the Divisional Controller, the Divisional Controller directed to him to approach the Karwar Depot. He asked for an order from the Divisional Controller. He asked him to meet the Assistant Administrative Officer and take the order. The Assistant Adminitrative Officer told him that he had been dismissed because of his absence. Then he made an application to the Divisional Controller. Ex. W-14 is his application dated 2nd May 1972 to the Divisional Controller. The Divisional Controller gave him reply dated 10/15th May 1972. Ex. W-5. In Ex. W-5 he was told that he had been dismissed from 1st September 1971. Till the receipt of Ex W-5 the Respondent did not give him any notice. No termination order was served on him. Nobody told him that his dismissal order had been notified on the notice board. That is why he has prayed for reinstatement with backwages and continuity of service. After he approached this Court, he got re-appointment order. Now he is working on daily wages. Because of this he has to sustain a loss of Rs. 2,000 to 3,000.

10. In cross-examination he states that it is not true that he has been given warnings 4 times for his inefficient service. It is true that he had been suspended for 3 days. It is not true that he was not doing his duty properly when he was in service. It is true that he had given savantwadi address by post. First he had taken leave for 5 days. It is not true that he was not ill at that time. It is not true

that he has not mentioned illness in his leave application. It is true that he went on extending leave. It is true that he was sending leave application by post. It is not true that leave applications were despatched from Savantwadi. They were sent from Mangikere. It is true that he sent an application for grant of leave from 1st April 1971 to 30th April 1971. It is not true that he has not given his address in the application. He had not verified as to how many days leave were in his credit when he went on leave. He sent application from 1st May 1971 but there is no evidence to show that he sent leave application. It is not true that Ex. W-2 is the last application sent by him. He sent leave applications upto April 1972. He sent leave application by post. He has not got postal acknowledgement to show that he sent leave application upto April 1972. He has not produced any medical certificate to show that he was sick till he joined duties. It is not true that he had purchased a truck at Savantwadi and was conducting private business. He did not make any application to enquire about grant of leave salary and other matters because, he was not in a position to do so. He did not ask his doctor also to make enquiries with the Respondent. He has got friends. They used to come to meet him during his illness. He did not ask them to go and enquire with the Respondent. He used to be conscious some times and unconscious some times during his illness. He has not produced any medical certificate to show that he used to be conscious for some time and unconscious during some other time. He has not produced any medical bills before Court. He do not know whether his dismissal order was notified in Karwar Depot as his whereabouts were not known. He do not know whether dismissed order has been served upto him. When he made an application to the Divisional Controller, he came to know that he had been dismissed from service. He was not given any order to go to Karwar depot to join. Without seeing his papers the General Manager has re-appointed him on humanitarian grounds. It is not true that in his appeals to the G.M. he had prayed for re-appointment and he did not pray for continuity of service. It is not true that his dismissal order has been passed in accordance with law.

11. In Re-examination he states that in his appeal to the General Manager, he had prayed for reinstatement with back wages and continuity of service.

12. The claimant has got to be reinstated in service on a short ground. MW-1 in cross-examination admits that the claimant has given his permanent address in his Service Register Ex. W-3 and that they have not sent notices to the address mentioned in Ex. W-3. It is a fatal mistake committed by the Respondent Corporation. They have not sent notice to the claimant to his permanent address given in Ex. W-3. On that ground he is entitled to be reinstate in service. But he is not entitled for back wages because even though the Corporation has not issued notices to the claimant to his home address, he is also guilty of latches. He has not returned to duty for so many months and he cannot claim back wages. Continuity of service will be allowed.

AWARD

13. I order that the claimant should be reinstated in service. He is not entitled for back wages. Continuity of service is allowed. No costs.

(Dictated to the Stenographer, Transcribed and typed by him and corrected by me and then pronounced in the Open Court).

Hubli

Sd/-
(H. L. NARAYANAGOWDA),
Presiding Officer,
13-9-1974 *Labour Court Hubli.*

"True Copy"

H. L. NARAYANAGOWDA,
Presiding Officer.
Labour Court Hubli.